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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,416	11/16/2001	Martin Thomas Miller	455610-2420	8540
20999	7590	02/15/2006	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			WEST, JEFFREY R	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/988,416

Applicant(s)

MILLER ET AL.

Examiner

Jeffrey R. West

Art Unit

2857

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-42.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
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TECHNICAL FIELD 2857

## Continuation of 3:

The proposed amendments to the independent claims requiring "receiving one or more input signals by the digital oscilloscope", "perform processing on the received input signals within the digital oscilloscope upon application of the associated processing element", "coupling one or more of the received input signals to one or more processing element graphical representatives", and "performing corresponding processing on said one or more received input signals within said digital oscilloscope" are considered to be new issues that would require additional search and/or consideration.

Applicant also argues, "This amendment was not presented earlier because Kodosky had not been cited earlier. Accordingly, entry of this amendment is appropriate; and entry is respectfully requested."

The Examiner asserts that the new grounds of rejection presented in the Final Office Action, which relied upon the Kodosky reference, was necessitated by amendment and properly made final. Therefore, entry of this amendment is not appropriate, as it requires additional search and/or consideration.

## Continuation of 11:

While the proposed amendment is not being entered, the Examiner also notes that Applicant argues "there is a significant, patentable difference between constructing a model of an instrument, as described by Kodosky, and constructing the actual, physical instrument, namely, the digital oscilloscope, as defined by Applicants' claims. At best, Kodosky builds a virtual instrument from a computer, a function generator and a digital multimeter (col. 17, lines 38-41, cited by the Examiner); but this is not an operating, easily configurable digital oscilloscope as is attained by Applicants' claims."

The Examiner first asserts that configuring a computer to act as a digital instrument is not any less an "actual, physical instrument" than a pre-configured/designed digital instrument.

The Examiner also asserts that while claims 1, 14, 22, and 35 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Kodosky, claims 1-6, 14-16, 18-27, 35-37, and 39-42 are also rejected under 35 U.S.C. 103 as being unpatentable over U.S. Patent Nos. 5,920,479 to Sojoodi et al. and 4,809,189 to Baston in combination with Kodosky, with both Sojoodi and Baston teaching methods for configuring and processing in pre-configured/designed digital oscilloscopes. Therefore, the modification of Sojoodi and Baston with Kodosky teaches the configuration aspects of Kodosky with the pre-configured/designed digital oscilloscopes of Sojoodi and Baston.



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